Committee on Judiciary
Connecticut General Assembly
March 9, 2011

Testimony of David R. Cameron in Support of

Raised Bill No. 6489, An Act Requiring DNA Testing of Persons Arrested for the Commission of a Serious Felony

I urge that you approve Raised Bill No. 6489, which would require the taking of a blood or other biological sample for DNA (deoxyribonucleic acid) analysis from those arrested for certain serious crimes.

I realize that many are opposed to such legislation. Individuals who are arrested for a crime are presumed to be innocent until proven beyond a reasonable doubt to be guilty, and many of those who are arrested later have the charges dismissed or are found to be innocent. Although few voice any objection these days to the routine fingerprinting that occurs when individuals are arrested, many believe that requiring individuals who are arrested for a felony to provide a DNA sample constitutes an invasion of their privacy and deprives them of their constitutional protection, under the Fourth Amendment of the U.S. Constitution and Article 1, section 7, of the State Constitution, against an unreasonable search and seizure.

These are serious concerns. But I believe there are at least three compelling reasons why the State should nevertheless extend the compulsory taking of a DNA sample to those arrested for a serious felony. First, extending sampling to those arrested for such a felony would increase the likelihood that at least some of the many unsolved crimes in which there is biological evidence from an unknown source, including crimes which remain unsolved for a very long time, would be solved. The State's DNA database contains two sets of DNA profiles. One consists of the profiles of those convicted of more than 30 sexual offenses and, beginning in 2003, those convicted of a felony. As of January, the F.B.I.'s Combined DNA Index System (CODIS) reported there are 78,493 offender profiles in the Connecticut database. There were also 2,457 forensic profiles belonging to unidentified individuals that were obtained at crime scenes. Some of the latter may of course be profiles of persons who were at the crime scenes but did not commit the crimes, and in some crimes multiple unidentified profiles may have been obtained. But there are many, many crimes in the state in which there is DNA evidence from an unknown source. Extending compulsory DNA sampling to those arrested for a felony might well lead to the solution of some of those crimes.

The second compelling reason for extending compulsory DNA sampling to those arrested for a felony is the likelihood that it would prevent the commission of some crimes by individuals who commit multiple crimes. Imagine, for example, that an individual commits a very serious crime -- for example, a homicide – in which there are

no suspects but there is DNA evidence from an unidentified source who is then arrested for an unrelated and less serious felony but released on bail and then at some later time commits another very serious crime – for example, another homicide. Requiring a DNA sample from those arrested for a felony would not, of course, prevent the first homicide. But it might prevent the second one if the DNA taken at the time of arrest for the less serious crime were found to match the DNA found at the scene of the first homicide.

This scenario may sound implausible. But consider the sequence of events reported in the wake of the arrest by the State's Cold Case Unit two years ago of a New Britain man for the murders of three Hartford teen-age girls in 1986-88 and the subsequent decision to throw out the conviction of Miguel Roman for one of the murders. On the day in October 1987 the second victim, 13-year-old Mayra Cruz, disappeared, the man was arrested on a narcotics charge. He reportedly had scratches on his face he couldn't explain. Mayra's body was found several weeks later. Biological evidence was obtained from the scrapings taken from her fingernails. If the state had required a DNA sample from arrestees in October 1987 – of course, the state didn't have a DNA database at that time, let alone a statute mandating DNA sampling from arrestees -- his DNA might have been taken when he was arrested on the narcotics charge. If it had been taken at that time, it might have matched DNA evidence in the fingernail scrapings obtained after Mayra's body was found several week later and he might have been arrested for her murder – possibly in late 1987, in which case he would not have been able to murder Carmen Lopez in January 1988.

The third compelling reason for extending compulsory DNA sampling to those arrested for a felony is the likelihood that it might contribute to identifying and overturning some wrongful convictions that have already occurred and prevent some wrongful convictions in the future. The wrongful convictions of James Tillman for assaulting, raping, and kidnapping a woman and Miguel Roman for the murder of Carmen Lopez occurred despite the presence of DNA from an unidentified man at each crime scene and on each victim. Tillman spent more than 18 years in prison until he was exonerated in 2006 despite the fact that he was not the source of the semen stains on the victim's clothing. Roman spent more than 20 years in prison despite the fact that he was not the source of the DNA found in Lopez' body, on the extension cord used to strangle her, and on cigarette butts at the scene.

As in most wrongful convictions, several factors contributed to those wrongful convictions. But both shared a common feature: In both, there was DNA at the crime scene and on or in the victim that came from an unidentified man. In both, that DNA was, years later, matched with the DNA of another individual. The man who committed the sexual assault for which Mr. Tillman was wrongfully convicted and the man who is now on trial for murder for which Mr. Roman was wrongfully convicted had both been arrested prior to those crimes. If the DNA technology that now exists had existed at the time the crimes were committed, and if the state had required a DNA sample from arrestees at that time, those men would have been arrested and tried and James Tillman and Miguel Roman would not have been wrongfully convicted and incarcerated.

Over the past several years, a number of states have enacted legislation extending DNA sampling to those arrested for some or all felonies. When I testified in support of similar legislation three years ago, I mentioned that after Virginia had enacted such legislation in 2002, 10 other states had enacted similar legislation. By the end of 2008, the number of states that had enacted such legislation had increased from 11 to 15. Now the number of states that have enacted legislation mandating the taking of a DNA sample from certain arrestees is 24. I have attached a summary, obtained from the National Conference of State Legislatures' DNA Laws Database, of the provisions of the legislation enacted in those two-dozen states. As the summary suggests, most of the states that have enacted DNA sampling from arrestees limit it to those arrested for violent felonies although there appears to be a trend to extend the sampling to all those arrested for any felony.

I realize many are either ambivalent about, or opposed to, legislation that would extend the compulsory taking of a DNA sample from anyone arrested for a felony. But I believe there are compelling reasons why the state should enact such legislation. Such legislation would increase the likelihood that at least some of the many unsolved crimes in which there is biological evidence from an unknown source will be solved. It would prevent the commission of some crimes by individuals who commit multiple crimes. And it would, in all likelihood, contribute to the identification and overturning of some wrongful convictions and, hopefully, prevent some wrongful convictions that might otherwise occur in the future.

Thank you.

David R. Cameron
31 Loomis Place
New Haven, CT 06511

State/Jurisdiction	Statute	Probable Cause Required	Qualifying Offenses	Effective Dates (if after 1/1/2010)	Time of Collection	Expungement	Notes on Collection	Specifically Includes Juveniles
Minnesota	Minn. Stat. §§299C.11, 105 (2009)	Yes	Enumerated offenses including murder, manslaughter, assault, sex crimes, burglary etc.		At arraignment after probable cause determination	Where the charge against the person was later dismissed, the bureau shall destroy the person's biological specimen and return all records to the individual.	The persons who collect specimens must be trained in bureau-established standards for collection	Yes
Missouri	Mo. Rev. Stat. §650.055 (2009)	Yes, but the sample can be taken before	Enumerated offenses including murder, burglary, sexually violent acts etc.		Upon booking or entry into a jail facility	When the state highway patrol crime laboratory receives notice it will expunge the sample	Procedures cannot conflict with the rules applicable to the Missouri DNA profiling system and the Federal Bureau of Investigation's DNA databank system	
New Mexico	N.M. Stat. Ann. §29-3-10(1978)		Felonies as defined as sex offenses or any other felony offense that involves death, great bodily harm, aggravated assault, kidnapping, burglary, larceny, robbery, aggravated stalking, use of a firearm or an explosive or a violation pursuant to the Antiterrorism Act.		At booking	Upon request	Samples shall be collected in accordance with rules and procedures adopted by the DNA oversight committee, shall be subject to the confidentiality and penalty provisions of the DNA Identification Act	
North Carolina	N.C. House Bill 1403 (2010) amends N.C. Gen. Stat. §§15A-266.3A, 502A		First and second degree murder; manslaughter; rape; sex offenses; cyberstalking; stalking; arson; armed robbery; assault inflicting serious bodily injury etc. Also includes arrests for attempt, conspiracy, and aiding and abetting these crimes.					
North Dakota	N.D. Cent. Code §31-13-03 (2009)		All felony offenses		At booking	Upon request		
Ohio	Senate Bill 77 (2010) modifying Ohio Rev. Code. Ann. §§2901.07(Page 2009)		All felony offenses	July 1, 2011	During intake process		Enumerated staff requirements for who may take the sample.	
South Carolina	S.C. Code Ann. §23-3-620 (Law. Co-op 2009)		All felony offenses		At booking	Automatic	Appropriately trained persons will take samples	Yes
South Dakota	S.D. Codified Laws Ann. §§23-5A-5.2,5A-1(2009)		All felony offenses/crimes of violence and other enumerations		At booking	Upon request		

State/Jurisdiction[1]	Statute	Probable Cause Required	Qualifying Offenses	Effective Dates (if after 1/1/2010)	Time of Collection	Expungement	Notes on Collection	Specifically Includes Juveniles
Tennessee	Tenn. Code. Ann. §40-35-321(2009)	Yes	Enumerated violent felonies - murder, sex crimes, burglary		After the Magistrates determination of probable cause	Upon charges being dismissed the department shall destroy the sample and all records of the sample		
Texas	Tex. Government Code Ann. §411.1471(Vernon 2009)	Depends on previous convictions	Indictment for enumerated felonies or arrested for enumerated felonies after having committed one previously		At arraignment and at booking depending upon previous criminal histories	Automatic		
Utah	Senate Bill 277 (2010) modifying Utah Code Ann. §53-10-403(2009).		All violent felonies	Jan. 1, 2011	At booking	If criminal charges are not filed within 90 days of booking, the department must destroy the sample.	Requires consistency with FBI forensic DNA analysis procedures	
Vermont	Vt. Stat. Ann. Tit. 20 §§1932 ,1933 (2009)	Yes	All felony offenses	July 1, 2011	At arraignment	Automatic		
Virginia	Va. Code. §19.2-310.2:1 (2009)	Yes	Person arrested for the commission or attempted commission of a violent felony as defined in statute - murder, sex crimes, burglary		At arraignment	Automatic. If the charge for which the sample was taken is dismissed or the defendant is acquitted at trial, the department shall destroy the sample and all records thereof, provided there is no other pending qualifying warrant or copies for an arrest or felony conviction that would otherwise require that the sample remain in the data bank.		

Note

1. States or jurisdictions that are not included have no such provisions.

Source: National Conference of State Legislatures, 2010.